

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, January 3, 2017
Time: 6:30 PM Closed Session / 7:00 PM Open
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER

Mayor Tran called the meeting to order at 6:30 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Mayor Tran, Vice Mayor Grilli, Councilmembers Nuñez and Phan

ABSENT: Councilmember Barbadillo was absent at Roll Call and arrived for Closed Session.

CLOSED SESSION

City Council convened in Closed Session to discuss one litigation matter.

City Council then convened in Open Session at 7:02 PM with all members present.

ANNOUNCEMENT

No announcement out of closed session.

PLEDGE

Boy Scouts Troop No. 92 led the pledge of allegiance.

INVOCATION

Mayor Tran offered a prayer to start the meeting.

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for January 2017

Vice Mayor Grilli noted that the Bicycle Pedestrian Advisory Commission was canceled for its regular meeting date on January 5, 2017.

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

PUBLIC FORUM

Rania Mohsin, Milpitas resident, explained that she lived nearby City Hall. She spoke of a flood wall being built near her community by the Santa Clara County Water District. There was a meeting planned with the Water District soon, about the height and appearance of that wall. She urged Council and staff to attend on Monday, January 9, 2017.

Voltaire Montemayor, Milpitas resident, spoke of some establishments where it was muddy on private property. Help the public, he urged, since puddles were dangerous.

ANNOUNCEMENTS

City Manager Tom Williams wished all a Happy New Year for 2017.

Vice Mayor Grilli reported on a notice from the Office of Government Relations of Santa Clara Valley Water District to announce that a special meeting on its rate structure including drought issues would be planned in 2017. She encouraged all to attend, when the date, time and location were announced in the future.

Councilmember Phan requested on the January 17 Council agenda a discussion on the Milpitas law enforcement stance on reporting undocumented residents to homeland security.

Councilmember Nuñez urged the Mayor and Council to hold some type of meeting to talk about issues the group would like to see this year going forward. All members had issues they wanted to work on. Council needed some in-service training he felt and staff should set aside a date for this session to be held in Milpitas, so the community could participate.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

Councilmember Barbadillo would recuse himself from agenda item no. 1 (proposed Utility District No. 6) due to location of his law office nearby.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as amended

City Manager Williams asked to remove agenda item no. 10 (Resolution MOU with IAFF) from the agenda to be considered at a later date since the IAFF Local had not yet voted to ratify the contract.

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Phan asked to remove item no. 11 from consent (Resolution to add one classification into the Fire Department).

Councilmember Nuñez asked to pull from consent items no. 9 (smoking ordinance) and no. 15 (contract amendment with JP Graphics).

Mayor Tran stated he would vote no on agenda item No. 13 (annex Houret Court project into the Community Facilities District).

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 5
NOES: 0

- * Meeting Minutes Approved three City Council meeting minutes for the meetings held on December 6, 13 and 16, 2016.
- * 4. Odor Control Report Received the update of the odor control report.
- * 7. Veterans Donations Approved donations to the Guide Dogs for the Blind, Semper Fi and Defenders Lodge, each in the amount of \$1,000 for a total \$3,000 donated to the service organizations in support of veterans.
- *10. Resolution IAFF MOU This item was removed from the agenda.
- *12. Resolution Adopted Resolution No. 8629 declaring weeds on specific properties to be public nuisances and set the public hearing date on Tuesday, February 7, 2016 at 7:00 PM in Council Chambers.
- *13. Resolution
 - 1) Adopted Resolution No.8630 certifying election results and adding Tract No. 10372 to Community Facilities District 2008-1 (Annexation No. 11).
 - 2) Approved Final Map Tract No. 10372, including approval of street names and acceptance of all offers of dedications as stated and depicted on the final map upon completion and acceptance of improvements.

3) Approved and authorized the City Manager to execute the Subdivision Improvement Agreement.

Regarding Resolution No. 8630, final map and SIA, Mayor Tran voted no.

*14. Resolution

1. Adopted Resolution No. 8631 authorizing the City Manager to execute an agreement for the acceptance and use of the 2016 Emergency Management Performance Grant (EMPG) in the amount of \$14,300.

2. Approved a budget appropriation in the amount of \$14,300 to the Fire Department's operating budget.

PUBLIC HEARINGS

1. Proposed New Utility District No. 6

Capital Improvements Program Manager Steve Erickson described utility work that needed to be done on South Main Street to get the overhead utility wires currently above ground to be moved underground. This would improve appearance and safety of the Main Street corridor. The effort at this meeting was to establish a new underground utility district, as had been done in the past for the part of Main Street in front of the Milpitas Library. Estimated costs were \$2.7 million using PG&E Rule 20A funds along with a \$550,000 amount from the City.

Mayor Tran opened the public hearing.

Liz Ainsworth, Milpitas resident on Quail Drive and Chamber CEO, felt the beautification part of this effort would be worthwhile. She was curious about current District No. 5 compared to the location of the newly proposed District 6 and hoped there would not be a gap. She asked if it would be continuous.

Voltaire Montemayor, Milpitas resident, felt this effort would smooth the flow and pathway to Great Mall. It was good development.

Robert Marini, Milpitas resident, wanted to know if the streets would be cut up to accomplish the goal. If yes, he wondered what the impact was to people on the street and the public.

(1) Motion: to close the public hearing, following three speakers

Motion/Second: Vice Mayor Grilli/Councilmember Phan

Motion carried by a vote of: AYES: 4
NOES: 0
ABSTAIN: 1 (Barbadillo)

Staff responded to several of the questions posed by the speakers. Mr. Erickson said previous undergrounding allowed this project overall to be continuous, though the districts were not contiguous. This was the last gap to be undergrounded. Trenching would be done to accomplish the goal while much work could be done at night.

(2) Motion: to adopt Resolution No. 8626 establishing portions of South Main Street and Corning Avenue as Underground Utility District No. 6

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of: AYES: 4
NOES: 0
ABSTAIN: 1 (Barbadillo)

2. Proposed New Utility District No. 7

Capital Improvements Program Manager Steve Erickson reviewed the goal and plan to underground utilities at another location, which was South Milpitas Blvd. at Montague

Expressway. This project would include typical city utility lines, but would not underground any high voltage lines operated by the electric utility (PG&E). This district would use PG&E Rule 20A funds of \$575,000 and \$75,000 of city funds.

Next, Mayor Tran opened the public hearing.

Robert Marini, Milpitas resident, while cutting up the streets to put in the utility lines, he wondered if fiber optic lines could go in at the same time.

Voltaire Montemayor, Milpitas resident, favored the public and beauty. This was similar to the previous one that was approved, and no encumbrances.

(1) Motion: to close the public hearing, following two speakers

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

Councilmember Barbadillo read in the report that it was expected to take up to 34 weeks to complete the project. He wanted to know what measures were put in place to handle traffic while the project was under construction. Staff noted that conduits were already placed in the ground, so this project involved pulling the electric lines through those pipes. Staff replied to further questions on construction scheduled and anticipated costs.

(2) Motion: to adopt Resolution No. 8627 establishing portions of South Milpitas Boulevard and Montague Expressway as Underground Utility District No. 7

Motion/Second: Vice Mayor Grilli/Councilmember Phan

Motion carried by a vote of: AYES: 5
NOES: 0

3. National Heritage Area

Councilmember Nuñez requested this agenda item since he had heard that some cities rescinded their actions on support for a National Heritage Area. There were some concerns around potential costs, he understood. He asked for more information on the resolution that was adopted by the previous City Council on December 13, 2016.

Mayor Tran invited Mr. Steve Preminger from Santa Clara County to the podium to be available to answer questions.

City Manager Tom Williams noted there were some concerns about property owners being impeded from improving properties while staff said there was no evidence of that nor of any associated costs with support for the County's effort to seek the designation.

Mr. Preminger spoke on behalf of the County Task Force on this topic. He told the Mayor and Council that there had been a presentation here last month by Chair Rod Diridon. The main issue of concern to some communities was whether this effort would impact land use. That would not occur, while the effort was about honoring historical sites and heritage across the County.

The Council accepted the comments from both gentlemen and no vote was taken.

REPORTS OF MAYOR & COMMISSIONS

5. Mayor - Commissions

Mayor Tran expressed his responsibility to appoint Councilmembers to serve as liaison to City Commissions. He reviewed his list as distributed in the agenda packet for 13 Commissions, four Council Subcommittees and a Citizen Task Force.

City Manager Williams and City Attorney Diaz reviewed the establishment of the Citizens Task Force on Water Rates, and the make-up of the task force. It was intended to consist of residents of Milpitas, to educate them about water costs and to potentially make recommendations to the City Council. It was suggested that having Councilmembers appointed to the citizens-only group was not appropriate.

Vice Mayor Grilli commented that at its formation, the idea was to give citizens full opportunity to discuss and make recommendations to the Council at the end. They would need to have the City Council stay out of their way.

Councilmember Phan stated that with regard to the Mayor's recommendation, he could not vote to ratify. None of his preferences were reflected in the Mayor's report. He was being recommended for Commissions that he had not expressed interest in.

Councilmember Nuñez asked to let the recommendations stand as presented.

Vice Mayor Grilli said that regarding outside of the city Committees and agencies, she was concerned for the City being unrepresented at scheduled meetings in the next few weeks. Mayor Tran responded that the outside committees were important, and he was still working on those outside agencies appointments for Council. He requested patience.

The Mayor next invited speakers from the audience.

Mr. Joseph Weinstein, Milpitas resident, thanked the Mayor for meeting with him earlier. He felt it would be inappropriate for Councilmembers to participate and attend the Citizens Task Force on Water Rates. Members of the task force (he was one) could meet, speak openly, and then vote on recommendations to City Council on behalf of citizens.

Mayor Tran responded then that he would remove himself from the appointment to the Task Force as recommended, and for Councilmember Phan also.

Robert Marini, Milpitas resident, said new Councilmembers should have the chance to express who they wanted to serve on the Water Rates Task Force.

Voltaire Montemayor, Milpitas resident, said he liked the liaison role for the Councilmembers to Commissions as a good set-up.

When Councilmember Nuñez next made a motion, he stated explicitly that it would not include the Mayor's Task Force recommendation (as on the list in the agenda packet).

Motion: to approve appointments as Council liaisons to 13 City of Milpitas Commissions and to four City Council Subcommittees, as recommended by Mayor Tran

Arts Commission: Vice Mayor Grilli
Bicycle & Pedestrian Advisory Commission: Vice Mayor Grilli
Community Advisory Commission: Vice Mayor Grilli
Economic Development Commission: Councilmember Nuñez
Emergency Preparedness Commission: Vice Mayor Grilli
Library Advisory Commission: Councilmember Barbadillo
Parks, Recreation & Cultural Resources Commission: Councilmember Barbadillo
Recycling & Source Reduction Advisory Commission: Councilmember Phan
Senior Advisory Commission: Councilmember Nuñez
Sister Cities Commission: Councilmember Phan
Telecommunications Commission: Councilmember Barbadillo
Veterans Commission: Mayor Tran
Youth Advisory Commission: Councilmember Phan

Finance Subcommittee: Mayor Tran and Vice Mayor Grilli

Land Use & Transportation Subcommittee: Mayor Tran and Councilmember Barbadillo
Facilities Naming Subcommittee: Councilmembers Barbadillo and Phan
City/Schools Communication Subcommittee: Vice Mayor Grilli and Councilmember Nuñez

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 4
NOES: 1 (Phan)

Councilmember Nuñez liked what Mr. Marini had said and would like there to be an opportunity to add new members to the Citizens Task Force on Water Rates. He requested to add this item to the next Council meeting agenda.

6. EPC Report

The City's Office of Emergency Services Coordinator Toni Charlop, who served as liaison to the Emergency Preparedness Commission, came to the podium along with Commission Chair Mike Berryhill and Vice Chair Tim Howard. She reviewed 2016 accomplishments of the Commission, including outreach to the community, especially via a highly successful Open House held last year. Goals in the workplan for 2017 were reviewed for the Council. Promotion of SAFE training was an emphasis and the group hoped to conduct a test pilot of "Map Your Neighborhood" program.

Vice Mayor Grilli said she has enjoyed working with the Commissioners on the EPC. She personally had gone through the SAFE training, as did Councilmember Nuñez, and she encouraged new Councilmembers to go through the program.

Councilmember Nuñez reported that the training was three fun-filled days, including training on radios and other equipment. He asked staff about the budget and what the allocated Commission funds go towards for the EPC.

Motion: to receive the report from staff and approve the 2017 Work Plan for the Emergency Preparedness Commission

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

8. Required Training

Human Resources Director Tina Murphy explained the requirement for various employees to receive training on Harassment Prevention in the Workplace. All employees including Councilmembers were required to participate in two hours of this training per year. She reviewed California law requiring such training. Ms. Murphy listed two upcoming dates for live training offered by the City and also online training that was available.

Vice Mayor Grilli noted that she had done the online training already in November. It was very informative and simple to complete on her own schedule.

Councilmember Nuñez asked the Director if she could send out those dates to Council and she replied yes. No vote was taken on this agenda item.

ORDINANCE

9. Ordinance No. 227.7 No Smoking Outdoor Dining

Councilmember Nuñez had pulled this item from consent to request a brief staff report.

City Attorney Chris Diaz offered a brief presentation, providing background and summary of why this ordinance was presented for adoption, based on direction from the previous City Council. Councilmembers, residents and Breathe California organization urged the city to adopt a regulation that would prohibit smoking at restaurant seating outdoors.

Motion: to waive the second reading and adopt Ordinance No. 227.7 amending Title V, Chapter 215 of the Milpitas Municipal Code to ban smoking in outdoor dining establishments

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

RESOLUTIONS

11. Resolution to Amend Classification Plan

Councilmember Phan requested to remove this item from consent. He wished to know more of the qualifications of the new position.

Human Resources Director Tina Murphy explained the minimum qualifications and education required for the new position of Chief Fire Enforcement Officer. She reviewed experience needed for this job as listed on the job classification attached to the Resolution. Specific certifications and licenses were required too.

Councilmember Barbadillo recalled that this topic was on the agenda before, but it was pulled. Ms. Murphy provided history as to why that happened, with the clarification that the City was not eliminating any Fire Department positions.

Fire Chief Rob Mihovich came forward to explain need for this position, with the current high demand for fire inspection services. It required a fire service background and some amount of police investigation experience.

Vice Mayor Grilli was happy this position was being brought back.

Councilmember Phan wanted to understand how this position was a priority over adding another Fire inspector. He thought perhaps the order of hiring seemed backwards. Also, he asked if there was a comprehensive report of illegal fueling in Milpitas.

The City Manager commented on a change in state law about fueling operations in cities.

Councilmember Phan wanted all the facts in order and would like to table this discussion for a future meeting. He made a motion to do so, and it was seconded by Councilmember Barbadillo.

Councilmember Nuñez recalled vacant campuses in Milpitas, in the past, with odd smells and remembered Fire staff coming in to inspect those buildings. But the Fire Department then could not arrest those with makeshift camping equipment or other illegal problems (e.g. vagrants in vacant buildings, etc). He did not support the motion.

Mayor Tran referred to the Ghost Ship fire in Oakland and did not want that to ever happen in Milpitas. The City needed to enforce the Fire Code strictly, as safety was most important with concern about any hazardous materials.

Councilmember Barbadillo favored safety, but his only concern was whether the position was appropriate for the City, a high level position. He disputed some of the rationale given for the position and urged staff to back up the need with data. He wanted a condition to get data if this was approved by the Council.

Councilmember Phan agreed with Mr. Barbadillo's comments. It was not appropriate to start the year with approving this costly new position. He asked about legal liability and the need to avoid lawsuits, to which the City Attorney responded.

The motion made above failed by a vote of two in favor (Councilmembers Barbadillo and Phan) and three opposed (Grilli, Nuñez and Tran). The next motion followed.

Motion: to approve three actions

- 1) Adopt Resolution No. 8628 amending the Classification Plan to reflect the addition of Chief Fire Enforcement Officer into the Milpitas Fire Department
- 2) Approve a budget appropriation from the General Fund in the amount of \$14,400 to the Fire Department's operating budget
- 3) Increase General Fund revenue by \$59,600 and approve a budget appropriation for \$59,600 to the Fire Department's operating budget

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 3
NOES: 2 (Phan, Barbadillo)

15. Resolution – for contract with JP Graphics

Councilmember Nuñez had pulled this item from consent to inquire about staffing regarding print services. He recalled that there was previously in-house printing at the City (before budget and staff cuts). He asked if any analysis was considered to go back to that arrangement, on costs of staffing, equipment and supplies, and possibly not to contract out the service.

The City Manager responded that he could not answer this question but could come back with information at the next Council meeting.

Councilmember Phan agreed with comments from Mr. Nuñez and would like the information offered in response from the manager.

Mayor Tran inquired about some terms of the five-year agreement with the vendor, JP Graphics. City Buyer Martin Garcia confirmed the terms and total costs over one year.

Mr. Williams said staff could itemize the costs by department and per year, and return with a report to the Council.

Motion: to defer any action on an agreement amendment with JP Graphics, to study costs of in-house versus contracted out printing services, and to return to City Council at the next meeting January 17 with a report on the information requested

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Tran adjourned the City Council meeting at 9:37 PM.

The foregoing minutes were approved by Milpitas City Council on January 17, 2017.

Mary Lavelle
Milpitas City Clerk